

ENVIRONMENTAL QUALITY COUNCIL

June 2, 1995, Montana State Capitol

Original Minutes with Attachments

COUNCIL MEMBERS PRESENT

Mr. Jerry Noble, Chair	Rep. Bill Ryan
Rep. Vicki Cocchiarella, Vice Chair	Rep. Debbie Shea
Sen. Vivian Brooke	Mr. Jerry Sorensen
Sen. William Crismore	Ms. Jeanne Marie Souvigney
Sen. Steve Doherty	Rep. William Tash
Sen. Lorents Grosfield	Mr. Greg Tollefson
Rep. Dick Knox	Sen. Jeff Weldon
Mr. Glenn Marx	Rep. Scott Orr

COUNCIL MEMBERS EXCUSED

Sen. Ken Mesaros

STAFF MEMBERS PRESENT

Ms. Deborah Schmidt
Mr. Todd Everts
Mr. Michael Kakuk
Ms. Sallie Melcher

VISITORS' LIST

Attachment #1

COUNCIL ACTION

Re-elected Mr. Jerry Noble as chair and Representative Vicki Cocchiarella as Vice Chair for 1995-96.

Accepted the "Staff Role and Mission" statement. (Exhibit 3)

Adopted the "Rules and Procedures of the Environmental Quality Council." (Exhibit 4)

Authorized the Chair to appoint a five-member hiring subcommittee to recommend a new legislative environmental analyst.

CALL TO ORDER AND ROLL CALL

The morning portion of the June 2, 1995 meeting convened at 8:45 A.M. In lieu of roll call, Mr. Noble asked all Council members to introduce themselves. (Attachment #2)

ELECTION OF OFFICERS

MR. NOBLE announced the election of chair for the 1995-96 biennium and asked MR. SORENSEN and SEN. BROOKE to count the votes on secret ballot. SEN. GROSFIELD nominated MR. NOBLE, noting that he had served well as chair for his previous term. MR. TOLLEFSON nominated SEN. DOHERTY. On his own behalf, SEN. DOHERTY said that he thought that for the sake of nonpartisanship that it was important to continue a tradition of rotating philosophical points of view. MR. NOBLE noted the 80% success rate of EQC requested bills passing in the 1995 Legislature and also said that he felt he had done well at overseeing staff. He also noted his long experience on the Council. After a secret ballot, SEN. BROOKE announced that MR. NOBLE had been reselected chair.

MR. NOBLE thanked the Council for their support and asked for nominations for Vice Chair. SEN. DOHERTY nominated REP. COCCHIARELLA for a second term as Vice Chair. There were no other nominations and MR. NOBLE announced that REP. COCCHIARELLA was automatically reelected. REP. COCCHIARELLA thanked the Council.

APPROVAL OF MINUTES OF PREVIOUS MEETINGS

MR. NOBLE noted there were copies of the minutes from the two previous meetings (November 18, 1994 and December 19 & 20, 1994) in Council members' folders and that, in order to give the Council time to look over the minutes, he would leave approval until the next EQC meeting.

ADMINISTRATIVE MATTERS

MS. SCHMIDT introduced BOB PERSON, Executive Director of the Legislative Council, who, she explained, was at the meeting to help explain the legislative reorganization, and STEPHEN MALY, Legislative Council Researcher, who has been assigned to spend 20% of his working hours on EQC work.

Legislative Reorganization

MS. SCHMIDT reviewed the reorganization. She noted the following as being the parts of the bill (effective 7/1/95) that are particularly relevant to the EQC and its staff:

* The EQC staff becomes part of the newly formed Legislative Services Division. The EQC staff will now be called the Environmental Policy Office and will become a parallel division

to the current Research and Legal divisions of the Legislative Council. The EQC staff will remain in the same office.

* The position of Executive Director will be replaced with the position of Legislative Environmental Analyst as primary staff person. The Legislative Environmental Analyst will be selected by the Council with concurrence of the Legislative Council.

* Regarding Section 69--All statutory duties that were assigned to staff are now assigned to the EQC itself.

* The Water Policy Committee was eliminated, but its duties were left intact and assigned to the EQC.

* Four new members were added to the EQC, two senate positions and two representative positions.

MS. SCHMIDT asked MR. PERSON to talk more about the reorganization. MR. PERSON said he felt that the mandate to reorganize could provide a foundation for necessary changes. The methods of building on that foundation, he said, will make all the difference. He said his personal preference is to go forward slowly in order to determine the needs of the legislative organization. He also noted the need for constant communication and collaboration among staff during the reorganization. He said he is committed, as is his staff to making the reorganization work well. He assured the EQC he and staff were working hard to keep day-to-day operations running smoothly during the reorganization, adding that a smooth blending of all agencies is challenging.

REP. TASH said he has noted that the public is concerned that with the reorganization among state agencies, individuals won't know where to go for permits or information. He asked MR. PERSON if there were plans to educate the public on the changes brought on by reorganization. MR. PERSON said that the changes REP. TASH was referring to were more applicable to the executive branch reorganization and recommended he ask MR. MARX when he arrived.

1995-1996 Budget Review (Exhibit #1)

MS. SCHMIDT explained that although the Water Policy Committee (WPC) was eliminated by SB 398, the EQC got funding to perform the work formerly carried out by the WPC. The new program number for the EQC will be 23 and the "Water Policy Special Budget Revenue" will be program 24. She said the main changes for the 1996/97 budget appear in the area of personal services. The EQC complied with the request to cut 10% of the budget in the early stages of budget development to set a good example for other agencies in state government. Then, she said, the EQC staff was cut by .5 FT, which resulted in actually cutting a staffer to a

half-time position, making EQC staff the only legislative staff that actually had to cut back a person's hours.

SEN. DOHERTY asked who will be controlling the EQC's budget in the coming biennium, i.e. who authorizes expenditure of funds? Can the Legislative Council "raid" EQC's funds? MR. PERSON said that yes, in theory the Legislative Council could take the EQC's funds, but the Legislative Council has always honored legislative intent. MR. PERSON gave his personal pledge that no EQC funds would ever be reappropriated without discussion with the EQC first.

MS. SOUVIGNEY asked what would be the practical implications of shifting responsibility for duties from EQC staff to the EQC. MS. SCHMIDT said practical implications would be minimal primarily because of her long standing work relationship with MR. PERSON and because MR. PERSON made the administrative decision to create a Legislative Environmental Policy Office, thus maintaining to a great degree, the status quo. Nevertheless, with a different director of the legislative services division that situation could change drastically.

SEN. WELDON referred back to the budget discussion. He said he recalled a long EQC discussion about EQC staff travel but didn't recall what was concluded. He also asked MS. SCHMIDT if line item 2400 in the 96-97 budget includes travel for staff as well as Council members. MS. SCHMIDT said that line item 2400 did include Council and staff travel; that there was no additional money budgeted for staff travel in addition to that budgeted for the last interim. However, MS. SCHMIDT indicated that because of the reorganization of the legislative branch, the directors were developing a training program spearheaded by the Legislative Auditor and it's possible the EQC staff will be able to benefit from this new program.

SEN. WELDON expressed his disappointment that there won't be additional funding for continuing education for staff. He said he felt that it is important for staff to obtain a larger, more national perspective on natural resource issues. He feels the EQC must recognize this need and then fund it. The EQC must look beyond the borders of Montana. He recalled the EQC had decided in past meetings that it should put more emphasis on traveling to natural resource-related conferences. He asked what the \$1,000 in the "Equipment" category on the EQC budget would pay for, and wondered if it was for, for example, computer repair. MS. SCHMIDT said that all computer equipment used by EQC staff is purchased and maintained by the Legislative Council. The \$1,000 in the budget would be for, for example, buying a tape recorder or some other relatively minor piece of office equipment.

SEN. GROSFIELD asked how the budget for EQC "staff enhancement" compares with that of the other legislative staff. MR. PERSON said the Legislative Council budget for staff continuing education is \$10,000, and that the Legislative Auditor's Office had budgeted more than that, but he didn't know the figure. He explained that the Legislative Council staff now has new Windows computer software and staff must be trained to use it. He said another expense in this category will be sending a staff member to the U.S. Bureau of the Census conference.

SEN. GROSFIELD asked if the EQC could use Legislative Council funds if they needed them. MR. PERSON replied that the Legislative Council already pays for all of EQC staff's major equipment, i.e. computers and maintenance, copy and fax machines. He said as far as staff training is concerned, the EQC staff will be considered as part of the legislative staff, not as separate, and if a staff member needs essential training, that need will be reviewed.

MR. MARX joined the meeting at 9:55.

MR. NOBLE asked if there were any more comments or questions regarding the legislative reorganization.

Staff Changes

MS SCHMIDT said that MR. KAKUK would become a .5 FTE employee as of July 1, 1995. She noted that MARTHA COLHOUN, who took PAUL SIHLER'S former position as a resource policy analyst on a temporary basis, had resigned and that the staff had received 50 applications for the position. Interviews are scheduled for June 5, 6 and 7 and staff hopes to have the vacancy filled by July 1.

She also acknowledged the contributions of the two interns from the Montana Conservation Corps, SHANI ABEL and KAREN FILIPOVICH, who were a great help to staff during the 1995 legislative session.

Finally, MS. SCHMIDT announced she would be resigning as EQC executive director, a position she has held for 14 years, to attend seminary as a candidate for ordained ministry in the Methodist church.

MR. NOBLE asked whose responsibility it would be to hire new staff for the EQC. MS. SCHMIDT said that until July 1, it would be the job of the EQC Executive Director to hire any new staff and after that it would become the responsibility of the Legislative Environmental Analyst, most likely in consultation with MR. PERSON. She explained different options for determining a hiring process for the new Legislative Environmental Analyst. (Exhibit #2)

MR. PERSON said that the Legislative Council had the statutory responsibility for administration of the EQC. He said they had not discussed the hiring process for the new Legislative Environmental Analyst. He suggested an EQC hiring subcommittee work together with the Legislative Council at some point in the process.

REP. COCCHIARELLA noted that when the legislature was discussing SB 398, one compromise she insisted upon was to give the EQC the right to have first choice of who their director would be, with the concurrence of the Legislative Council.

MR. PERSON said that even considering that, it would be a good idea to work it out in advance with the Legislative Council to avoid problems later.

MR. NOBLE said that when the EQC hired a facilitator a couple of years ago they assigned a subcommittee to choose the person. He said he interpreted MR. PERSON'S comments to mean that the Legislative Council must have final approval of the EQC's selection of the LEA.

SEN. DOHERTY asked MS. SCHMIDT when she would be starting school. MS. SCHMIDT said she would be working through the end of July.

SEN. DOHERTY noted the need for continuity and thought that it would leave a void when MS. SCHMIDT leaves, so he suggested that it might serve the Council well to have a new LEA on board before MS. SCHMIDT leaves.

MR. NOBLE said that in his business when they need to fill management positions, they make it a practice to hire from within the organization. He feels this practice is good for employee morale and that if the EQC already has someone on staff who is capable and qualified for the position that it would be least disruptive and best all around to offer the position to that person.

REP. COCCHIARELLA said it would be important to follow a legitimate process in the search, in the spirit of fairness and to foster the Council's credibility, to follow a hiring process similar to the that followed by other state agencies.

REP. KNOX asked how REP. COCCHIARELLA would define "legitimate search." REP. COCCHIARELLA said an internal search might be completely legitimate, but she felt it would be best not to skip any steps in the hiring process as the EQC could leave itself open to lawsuits or be challenged in some other way.

REP. KNOX agreed and said not going through some sort of well-designed and considered hiring process could leave the Council

open to criticism and might even become uncomfortable for the new LEA. He also said, though, that he didn't want the job search to become cumbersome and expensive.

SEN. WELDON agreed with the need to follow rules in the hiring process and suggested that if there is a hiring subcommittee that he would encourage MS. SCHMIDT to participate as a member because her years of experience would be very valuable.

MS. SCHMIDT expressed her desire to be a member of the LEA hiring subcommittee.

SEN. WELDON moved that the Chair appoint a hiring subcommittee including four EQC members and MR. PERSON and MS. SCHMIDT, and he encouraged that the subcommittee act quickly to hire someone before MS. SCHMIDT leaves, within the constraints of budget.

SEN. GROSFIELD asked what REP. COCCHIARELLA meant by the phrase "internal search." REP. COCCHIARELLA explained that in state agencies the official hiring process involves first looking within the agency for qualified candidates, then going to the RIF (Reduction in Force) pool, and, finally, to announce the opening to the public. She said she was in agreement to look internally first.

SEN. GROSFIELD asked if by "internal" she meant internal to the EQC staff or internal to the Legislative Services Division. REP. COCCHIARELLA said that, because the EQC is a separate office, that "internal" could legitimately mean within the EQC staff.

MR. NOBLE asked if it was agreeable to everyone to wait until after lunch to continue the discussion regarding hiring a LEA. He said he was envisioning a five-person subcommittee with MS. SCHMIDT included, but with all due respect to MR. PERSON, a six-person committee sets the stage for tie votes and therefore, for delays in the process.

SEN. BROOKE said that although she recognizes the hiring of a LEA is an important responsibility of the EQC, that she would like not to belabor details in the full EQC because that's what the hiring subcommittee will do.

MR. NOBLE agreed that the full EQC should not spend too much more time on the discussion and agreed, also, that determination of "scope" of the search (within the EQC? the Legislative staff? state agency staff?, etc.) should be made by the subcommittee.

REP. COCCHIARELLA questioned whether a 5-member committee could be nonpartisan. MR. NOBLE said he was just interested in figuring out the best and fairest make up for the subcommittee. He said

they could talk more about the hiring committee after lunch. He noted there was one more agenda item under "Administrative Items."

MS. SCHMIDT asked MR. KAKUK to distribute the memo on staff role and mission. (Exhibit 3)

MR. KAKUK noted that SB 398 shifts work responsibility from the EQC staff to the EQC. There used to be four EQC meetings a year and staff did the work. Now, EQC will be doing the work. He said staff wanted to clarify who they are supposed to be serving. As it stands, the EQC is staff's most important client, other legislators and members of the public are second most important. Other state agencies and the implementation of the Montana Environmental Policy Act are staff's third priority. To serve these parties, staff does the same thing in each case--provides objective information--identifies issues and options. MR. KAKUK said that in the 1995 legislative session, he was singled out as "taking sides" with the environmental groups and state agencies. He wanted to make sure the Council knew he was not "pro" any specific groups, but that he is a very proactive staffer.

MR. NOBLE said the Council definitely needs to know everything they can about every issue they study and that it's important for staff to research thoroughly and to report what they find.

REP. KNOX said that he felt MR. KAKUK always demonstrated the greatest respect for the (legislative) process. He also said that he thought the charges against him emanate from the fact that the Natural Resources Committee deals with contentious issues and when "things aren't going the right way, there can be finger pointing." He felt the charges against MR. KAKUK were baseless.

REP. TASH said the Republican caucus had a meeting during the session about the charges and "got everything out in the open" and they concluded the charges were not based on facts and, he said, with the help of MS. SCHMIDT he felt the issue had been cleared up.

MR. NOBLE said he had never observed any bias on the part of EQC staff.

SEN. GROSFIELD said he felt that it was one of the staff's strong points that they raise issues that might be controversial and bring them to the attention of legislators. He asked if other legislators and the public will lose their status as second highest priority for staff time. He expressed his concern that if the staff is subject to time constraints, that the public might lose out. MR. KAKUK said that was a possibility.

REP. COCCHIARELLA MOVED to accept staff goals and mission as presented. Motion passed unanimously.

MR. NOBLE asked if there was any input regarding an appropriate room for future meetings. REP. TASH said that he felt that when it was appropriate, the meeting could stay in 325, so the public can participate. REP. KNOX said he didn't like the seating arrangement for Council members and staff and he would suggest meeting at the DNRC conference room.

MR. NOBLE said staff and Council could work together to set up meetings and move meetings around as needed.

REVIEW OF EQC RULES AND PROCEDURES

MR KAKUK referred the Council to the "EQC Rules and Regulations." (Exhibit 4) He noted four items in particular:

1) the rules still refer to "Executive Director." The lead staff position will become the Legislative Environmental Analyst as of July 1, 1995.

2) Item VIe., Staff Research, requests for research not in the work plan should not exceed two person days (16 hours) without approval of the Chair.

3) Item VIII, Travel and Expense Reimbursement--the Chair is responsible for approving out-of-state travel for the Executive Director and for Council members. EQC members should take note that they must get approval in advance for out-of-state travel, or they will not automatically be reimbursed for expenses.

4) that the rules of the Montana State Senate apply to the EQC. MR. TOLLEFSON MOVED to adopt the Rules and Procedures. SEN. WELDON seconded the motion. Motion passed unanimously.

SUMMARY OF STATUTORY COUNCIL AND STAFF RESPONSIBILITIES

MR. EVERTS introduced Exhibit 5 and discussed statutory responsibilities.

SUMMARY OF 1995 ENVIRONMENTAL AND NATURAL RESOURCE RELATED BILLS AND LEGISLATION

MS. SCHMIDT referred Council members to a final status of EQC bills (Exhibit 6) and to a broad summary of the final status of bills related to natural resource issues. (Exhibit 7) She noted that all but one of the bills requested by the EQC were passed by the 1995 legislature. She reported that the *Final Status of Natural Resource Legislation in the 54th Montana Legislature* is almost finished. She also introduced MR. EVERT's summary of MEPA changes. (Exhibit 8)

SEN. DOHERTY said, regarding SB 162 (to Extend the Termination Date for Recycling Tax Credits and Tax Deductions) the one EQC-requested bill that did not pass, that Senator Halligan sponsored a recycling bill too. Sen. Doherty speculated the Taxation Committee might have thought that Sen. Halligan's bill was a better bill.

SEN. GROSFIELD said he was on the Taxation Committee, but he could not recall why SB 162 had been tabled in committee.

REVIEW AND SELECTION OF INTERIM WORK PLAN OPTIONS

MR. NOBLE said he would like to leave some staff time open to review ongoing issues. He asked MS. SCHMIDT to clarify the two-day rule in the "Rules." MS. SCHMIDT said that meant that if a legislator called and asked staff to work on something that would take more than two days, the EQC chair would have to approve it first.

MS. SCHMIDT introduced the proposed work plan. (Exhibit 9) She said it was a draft and open to change. She added that it would not be necessary for the Council to approve the work plan at this meeting.

Montana Environmental Policy Act

MR. EVERTS explained EQC's responsibilities under MEPA.

SEN. WELDON noted that at a previous EQC meeting it had been suggested the EQC undergo a half-day MEPA training session. He said he thought it was a good idea. He suggested part of that training session be devoted to hearing from people at the agencies about their views of MEPA. He asked who would be responsible for performing Possible Goal #2 if the EQC didn't do it. MR. EVERTS said the agencies would be responsible. The question is whether the Council should participate in the process.

SEN. GROSFIELD referred to "Possible Goal #3"--to revisit MEPA administrative rules. He asked what exactly such a project would entail.

MR. KAKUK said that every agency knows the rules, but each interprets them differently. The question is whether there should be a process to find out where the differences are and correct any problems.

REP. KNOX asked, regarding discussion of the work plan, if MR. NOBLE planned to have a comprehensive discussion on each of the assigned topics. MR. NOBLE said yes, he wanted a full discussion of each topic.

REP. KNOX asked how much staff time it would take to perform Goal #2.

MR. EVERTS said his MEPA duties take about 3/4 of his time. So, if the EQC decided to implement Goals 1 and 2, it would probably take another .5 FT.

MS. SOUVIGNEY asked how many bills listed in Exhibit 8 required rulemaking. She said it would be useful to find out how other bills besides SB 231 affect changes in MEPA. MR. EVERTS said that would be addressed in a Council training session.

MR. NOBLE asked for public comment on the MEPA rules.

54th Legislative Study Requests

MR. KAKUK explained HJR 10 as a possible work topic.

MR. EVERTS explained legislative oversight of the Senate Bill 382 study on the elimination of joint and several liability and the related funding necessary to clean up state Superfund sites as a possible work topic.

SEN. BROOKE asked how far the department has gotten with appointing the group that would do the work. MR. EVERTS said the reorganization of resource agencies is the priority right now for DHES personnel. He said they met with Matt McKinney of the Consensus Council, but no action has been taken.

MR. GEACH, Acting Administrator of the Environmental Remediation Division, DHES, said that was accurate; that they had drafted a contract with the Consensus Council to start the process. They envision the working group will have members of the Department, members of other affected departments, private citizens affected by the process, everyone the Joint and Several Liability Act covers. They are in the process of forming ground rules, etc.

SEN. DOHERTY said he understood it was charged to the EQC to oversee the process, not to the DHES. He asked what the EQC's role would be. He expressed surprise that the DHES had already decided the Consensus Council should be responsible. MR. GEACH said SB 382 directs the DHES to implement the bill with the oversight of the EQC. He said the Consensus Council was brought in by the DHES because they are skilled at getting consensus among differing points of view.

SEN. DOHERTY asked MR. GEACH how the DHES decided to bring in the Consensus Council without consulting with the EQC,

considering the EQC is charged with oversight. MR. GEACH said it was not a "done deal." The EQC still has opportunity to participate.

MR. DOHERTY said it sounded to him when he read the bill, as though the EQC had the responsibility for oversight of implementation of the bill. He said that doesn't mean just participating on the committee. He said the Environmental Quality Council was also a group that was very good at bringing consensus on issues.

SEN. GROSFIELD said he recalled drafting the language that mentioned the oversight, but did not recall exactly what it said. He suggested copies of the bill be made during the lunch break for review by the Council.

MR. GEACH said the role of the Consensus Council would not be to oversee the study; rather to act as catalyst to pull all parties together.

SEN. DOHERTY asked MR. GEACH if a contract had been signed with the Consensus Counsel already. MR. GEACH said no that there was just a draft contract.

Water Policy Issues

MR. KAKUK explained that when SB 398 eliminated the Water Policy Committee, it gave the duties of the Committee to the EQC. He asked that the agenda be revised to deal first with Water Research, as DOROTHY BRADLEY, Water Research Center (WRC) Director, was waiting to discuss the WRC.

MS. BRADLEY introduced Exhibit 10, a series of information sheets illuminating different aspects of the Water Research Center. She explained she was selected as director a year and a half ago. She said they were part of a national network of water research centers; the National Institute of Water Research Centers. She said this institute has traditionally administered a small amount of federal money for water research centers in almost every state, usually housed at land grant institutions. When she started as director, the Water Research Centers primary function was to bring money into Montana for state and local water research. About two years ago MSU decided they should make a bigger investment in the WRC. They did a national search for a director who would initially be paid a salary with the understanding that the center must soon become self-supporting. The Center has been, in the last two years, putting a small portion of federal dollars into the Universities of Montana at Butte and Missoula so that there will be a cooperating state group. MS. BRADLEY'S associates are Marvin Miller at Tech at Butte and Don Potts at

Missoula. She discussed the advisory committee and its role in grants. She said when considering giving research grants they are focusing on researchers whose work is relevant to solving water issues in the state, as their research is funded by tax dollars. They always ask "Why is this research important to our state?"

SEN. WELDON asked if the Water Research Center's primary focus was water quality, delivery and technology as opposed to legal issues. MS. BRADLEY said that was not necessarily true. She said she asks the scientists who receive grants to come to meetings to talk to the advisory committee about research projects so the advisory council knows what they are getting for their investments. When they send out RFPs they include a list of the advisory committee's priorities. Thus they stay in tune with what's important to the state.

MR. WELDON asked if she had communicated with the Reserve Water Rights Compact Commission. MS. BRADLEY said no, but if the EQC deemed it important they would do that. She wants to find more ways to make their research available to the public at large and to policy makers.

SEN. WELDON said on the Rocky Boy's Reservation they were looking into a water delivery system; the Big Pipeline. Would an issue like this be appropriate for the WRC? MS. BRADLEY said there is no reason the Water Research Center shouldn't be involved in policy, political science or cultural research. She said, in fact she would relish that opportunity.

SEN. BROOKE said she noticed on the handouts that there is an education component of wellhead protection. She said she sponsored a bill on wellhead protection in the 1995 legislative session and knows of a group that works on wellhead protection. She asked if the WRC was involved with that group. MS. BRADLEY said the program was critical because every small system in the state depends on well water. She said the Center has been working with DHES and people in the field. She explained that the pilot program they have constructed for wellhead protection will involve selecting four communities of different geological landscapes and help them put together wellhead protection programs with the technical guidance of hydro-geologists to find the least expensive ways to protect wellheads. From these pilot projects, training manuals will be constructed to educate all the private operators in the state.

REP. SHEA asked if there are channels in place to disseminate water research information to communities. She asked how people in Butte could find out about the program.

MS. BRADLEY said that although the Center has an outreach program, it is aimed more toward the academic community than toward lay people. She mentioned that the Montana Watercourse had splintered off a few years ago and they had been the component of the programs that dealt with education. She said they want to function more and more as information brokers, so people seeking information should contact them. She said they did not have nearly enough funds to have as large a public information program as they would like. As part of the drinking water program, she said, they polled water operators throughout the state about what the role of the WRC should be and from that came up with two focus areas: demonstration and education. The demonstration program is in place.

MR. NOBLE thanked MS. BRADLEY and said EQC staff would be contacting her about speaking at a future meeting.

He recessed the meeting for lunch at 12:10 p.m. MR. NOBLE reconvened the meeting at 1:50 p.m.

MR. KAKUK discussed the State Water Plan as a possible work topic.

MR. KAKUK discussed the Renewable Resource Grant and Loan Program as a possible work topic.

SEN. GROSFIELD mentioned that there used to be a Water Development Advisory Council that has since been disbanded. He said its purpose had been to rank the water projects in order of priority to have an impact on what water projects were done. He asked MR. KAKUK if that was similar to what he was talking about.

MR. KAKUK said that was correct, that the Water Policy Committee had wanted to assume that role and get involved early in the grants and loans process to help determine priority projects.

REP. TASH said there is a Big Hole River advisory committee with an ongoing role to advise on issues concerning the river. He wondered how best to coordinate efforts of local advisory groups with those of state agencies and the state Water Policy Committee. MR. KAKUK said that would be a separate issue from the Resource Indemnity Trust, but concurred that watershed planning was an important issue. He said natural resource state agencies are committed to helping local groups with local issues. He mentioned the Watershed Planning Coordinating Council with DHES and DNRC.

MR. KAKUK discussed Water Data Management as a possible work topic.

MR. TASH asked when the East Bench Groundwater Study would be completed. MR. KAKUK said the reporting date would be in the fall and that the implications of the study would be nationwide; that it was a very important study.

MR. KAKUK discussed Water Leasing as a possible work topic.

MR. KAKUK discussed State Drought Response as a possible work topic.

MR. KAKUK discussed Wilderness Dam Maintenance and Repair as a possible work topic.

REP. KNOX asked if a five-year dam maintenance plan had ever been challenged on the grounds of the Wilderness Act.

MR. KAKUK said to his knowledge it had not been challenged. There is a big range of strategies and interpretation of what is or isn't allowed.

MR. KAKUK discussed Water User/Recreational User Fees as a possible work topic.

MR. NOBLE asked if there was a priority list of areas. MR. KAKUK said yes, the DNRC had ranked Bear Paw, Tongue River and South Sandstone reservoirs as being the top three.

MR. NOBLE asked if MR. KAKUK knew how many dams were on the list. MR. KAKUK said no, but he would get the information for MR. NOBLE.

MR. NOBLE asked if there was already money designated for Tongue River Reservoir. MR. MARX said yes, they were at the point in the process where there has been a call for bids for the project, and the Bear Paw, Tongue River and South Sandstone are on the "short list." He said the project was "on course."

MR. KAKUK discussed the issue of Instream Flow as a work topic.

MR. NOBLE asked if there were any more questions regarding water policy work issues or ideas on how the EQC could implement the work plan.

MR. TOLLEFSON asked how much of a staff time commitment would be needed to do everything in the work plan. He asked, for example, how much staff time it would take to do all the water policy work on the work plan MR. KAKUK had been discussing. MR. KAKUK said the Water Policy Committee took up half his time over the last five years. In, addition, he estimated it took another .25 FTE for administration and support. He said since there is no Water Policy Committee anymore, that will eliminate much of the administrative duties, so the time requirement will probably go down to about .5 FTE.

SEN. GROSFIELD said he thought most of the water policy work topics were just a matter of monitoring and some, like the wilderness dams issue are "sleeping dogs." He suggested that a staff member prepare a short report on each issue and the Council deal with one issue per meeting. He said it appeared to him that the Water Policy Committee had done most of the work already on most of the work topics mentioned. MR. KAKUK said that yes, that they could get by with .25 FTE of staff time if they decided to do the statutory assignments at their barest minimum.

SEN. BROOKE said she was concerned about the WPC's role in the Renewable Resource Grant and Loan program previously discussed. She was concerned about the amount of time that might take. She said it would be good to have some involvement in this area, but that if the EQC took on too much responsibility, it would use up a lot of time. She said she would like more information about the role the EQC might take in that program. MR. KAKUK said that traditionally the WPC would get a report of what the DNRC thought was priority and, by then, it was too late for the WPC to contribute. The WPC wanted to get in on the initial drafting of a water issues priority list.

SEN. WELDON asked if there was support among the Council for a Water Policy subcommittee. He wondered if forming such a subcommittee was the intent of the legislature when they eliminated the WPC.

SEN. GROSFIELD said that water policy issue work did not appear very involved to him and he reiterated he thought it could all be dealt with at EQC meetings.

MR. MARX asked if they were going to decide right then on a work plan. MR. NOBLE said they would discuss it now and decide on a work plan at the next meeting.

MR. MARX said he didn't think the Renewable Resource Grant program was something the EQC should spend much time on. He said there was a general consensus that the DNRC did a great job of prioritizing projects, so it didn't seem there was a need for the EQC to get involved.

MR. NOBLE suggested that the DNRC might come to EQC meetings to brief the EQC on what they were proposing, and why.

Other Potential Study Topics

MR. KAKUK discussed Environmental Risk Assessment and Prioritization as a possible work topic.

MR. TOLLEFSON said this was a "pet project" for him. He feels it is essential to move forward to make a "resource inventory of the state." He said he recognizes limitations on staff time, but he considers this an important project that should be worked on. He said the state's economic future hinges on how we take care of what we have.

MR. SORENSEN said in his experience as a professional planner, it seems most issues or threats to the environment occur at local, regional or county levels. He wondered how it would be possible to do a broad-based statewide assessment of environmental threats.

MR. ELLERHOFF, Administrative Officer of the DHES, said similar statewide assessments were being completed in Utah and in North Dakota. Utah started in 1991, and still isn't finished. He suggested a smaller scale for Montana. The art of risk assessment comes in putting all the information together.

MS. SOUVIGNEY asked if MR. ELLERHOFF had an example of an environmental risk assessment that was done on a "smaller scale." MR. ELLERHOFF said they were interested first in reorganizing and then they would move on to risk assessment. He said they were keeping abreast of the issue. He said that, as MR. KAKUK mentioned, the EPA has indicated risk assessments are a good idea and "when the EPA hints, you listen."

MR. TOLLEFSON wanted to make sure he understood they were all talking about the same thing. As he understands it, risk assessment means having a comprehensive inventory of selected resources on which decisions can be based. He feels that not having such an inventory is why the decision making process has often broken down, or has become controversial.

MR. KAKUK said the inventory MR. TOLLEFSON was talking about would be the first step of an environmental risk assessment. First, the study would decide the resources upon which to focus. Next, there would be an inventory to answer the question-- We know what we want to measure, now how are we going to measure it? Everything else follows logically from that. He said, in answer to MR. SORENSEN'S question regarding how to make risk assessment a statewide process, it would have to start on a local level. He said you would have to actually go and talk to people. He said 20 years ago, the EQC did that. They divided the state into seven geographical regions and evaluated environmental, social, and economic impacts, but no one bought into it. The reason it never took hold was that the state agencies were never told to use the information compiled from the EQC research to make their decisions. He said that was the difference between the states that are making their risk assessment programs work and the Montana program. He noted this work is still the EQC's responsibility.

MR. TOLLEFSON said the state does not have a centralized, organized body of risk information; it just has piecemeal data, and agencies are using it to make decisions. MR. KAKUK said one could make the argument that all the information exists, but no one can access it. It just needs to be gathered together.

MR. NOBLE said for the EQC to do a state environmental risk assessment, there would have to be some legislative involvement. He recalled when the EQC discussed this in 1991, but he said, they have neither the time or money to do the job.

MR. KAKUK said MR. MALY might have input on this issue.

MR. MALY said he was particularly interested in being assigned to do research for the EQC because there is a logical connection between environmental quality and economic development. People outside the environmental field need to know the relationship between natural resource development and resource protection. He said he's interested to find out how environmental risks relate to economic development to come up with something the legislature can use to make decisions. He said senior members of the Legislative Council want to know how the EQC and the Legislative Council can work together to gain a broader reach.

MR. NOBLE asked MR. MALY for an example of such a situation where the two councils could work together. MR.

MALY said he staffed House Business and Labor which has a lot of impact on how funds will be allocated and how some federal money will be channeled into economic development projects. He noted that, increasingly, there appears to be a need to incorporate environmental components; new technology, new ways to use resources and long term environmental costs.

MR. NOBLE asked if MR. MALY was saying he wanted to be involved in a joint study, and if so, which of the councils would pay for his time. MR. MALY said he wasn't sure, although, as he understood it, he will be paid from the Legislative Council budget, but his responsibilities will change somewhat.

MS. SOUVIGNEY said she didn't understand the project and asked if the Colorado executive summary that MR. MALY mentioned was available.

MR. MALY said he was only focusing on assessing risks and costs as related to economic development because that is his area of expertise.

REP. KNOX said he would have questions about the viability of a risk assessment project. He felt it would have to be considerably narrowed down before it could go forth. He wondered if "sustainability" in connection with economic viability will get a consensus. Long-term cost and economic benefit just by itself could take a great deal of time. He noted that the Hazardous Waste subcommittee of the EQC dealt with just one issue, spent a lot of money and didn't get much in the way of significant results.

REP. TASH said he could see the importance of risk assessment, but he was concerned about the possibility that conservation practices would be disallowed if they were production oriented. What better way to pay for conservation than by production oriented practices? He sees it as a cost-sharing opportunity for protecting the environment.

MR. MARX recalled that the EQC had discussed risk assessment in previous meetings. He said he was in favor of private citizens selecting the issues. He suggested getting EPA experts to come to a meeting and spend some time helping the EQC figure out if and how and how to do a risk assessment project. He also said he would like to see the legislature give specific direction on this matter.

MR. TOLLEFSON said that he felt it was important to do risk assessment now. He said he thought all the information was available, it just needed to be gathered together.

MR. NOBLE asked if the Council would agree to have staff in the next few months revisit the issue of risk assessment and then, at a future meeting, spend a half-day to discuss it again.

SEN. WELDON suggested MR. TOLLEFSON and MR. SORENSEN work with staff on this item.

MR. NOBLE asked if any Council members wanted further discussion of anything in the work plan.

SEN. CRISMORE noted that during the last legislative session, there was discussion of trying to get legislators to come up to the Libby area and look at water quality issues. He said he was organizing an event to facilitate this goal. All legislators and EQC members will be invited.

MR. NOBLE encouraged members to participate. He added that he still was hoping to organize an EQC trip to Metanetix, the metal recovery operation in Butte.

MR. NOBLE suggested a discussion on the hiring process for a Legislative Environmental Analyst. He suggested members look over study topics before the next meeting and determine how to set priorities. Also, he suggested a half-day should be scheduled to discuss the risk assessment and prioritization project.

REP. KNOX said he felt it was extremely important to integrate SB 231 into MEPA.

MR. SORENSEN said he agreed with the need to provide some methodology about how to do that.

SEN. WELDON moved that the chair be authorized to appoint a five-member group including MS. SCHMIDT and four EQC members with MR. PERSON in an ex-officio, non-voting role. He suggested this subcommittee consider the need for balance and they should get the work done within the next month.

SEN. BROOKE said in SEN. WELDON's original motion he said something about "scope" and asked him to clarify. SEN. WELDON said he would envision looking first to the

possibility of hiring from within EQC staff and then move to a search wider in scope, if necessary. Motion to authorize the Chair to appoint a committee passed unanimously.

MR. NOBLE appointed MR. NOBLE, REP. TASH, MR. TOLLEFSON, REP. COCCHIARELLA and MS. SCHMIDT to a hiring subcommittee and set a time for the subcommittee to meet at 10 a.m. on Friday, June 9.

REP. RYAN asked what the subcommittee's goal would be.

MR. NOBLE said he hoped they would actually have a person to recommend for the LEA position to the EQC. He said they would keep the Council informed of the activities of the subcommittee.

MR. NOBLE said it was time to revisit the question of the language in SB 382. He reported SEN. DOHERTY talked with MR. MCKINNEY during the lunch break. SEN. DOHERTY said that the bill mentions legislative oversight by the EQC and doesn't say much more than that. He said he doesn't know how they should interpret "legislative oversight" but he thinks that at a minimum it would mean the EQC appointing a subcommittee to participate in the process.

SEN. GROSFIELD said "oversight" could mean anything from monitoring to calling all the shots. He said the intent of the bill was to make it the DHES's project. He suggested it would suffice to include some EQC members to monitor the process.

MR. NOBLE agreed and said those representatives could report back to the EQC.

SEN. BROOKE said that when the Senate Natural Resources committee was working on SB 382, she raised an objection to the process, because amendments were put on the bill as "consensus" amendments, but the consensus was between the Department and industry and she felt the legislature was neglecting their responsibility to analyze the value, merit and credibility of that consensus. She still has that concern and a further concern that a change occurred so that the state Superfund would be funded and the cleanups would happen without the public's involvement. The public needs to be involved at some level. She believes the Superfund program is working well, and because joint and several liability is controversial, these decisions should not be left to the executive

branch. She would encourage the EQC to take their oversight role very seriously.

MR. NOBLE asked if MR. MCKINNEY said how the collaborative would be constructed.

SEN. DOHERTY said he'd get together with the EQC to develop a list of interested parties. SEN. DOHERTY suggested inviting MR. MCKINNEY to come and explain the process of implementation of SB 382 and to explain why the Consensus Council was involved and what the cost would be.

MR. NOBLE asked if there was any public comment or questions regarding SB 382. SEN. GROSFIELD said what was being asked for is a proposal. The proposal will come from the legislature, so there will be plenty of public involvement. So far as the Consensus Council is concerned, it was formed for just this sort of thing. He said he thought the EQC already had a "full plate."

SEN. DOHERTY said there was a million dollars "floating around" and he's interested in finding out who's going to decide who gets the money and based on what criteria.

MR. NOBLE said the Council would invite MR. MCKINNEY to the next meeting.

SEN. GROSFIELD said the legislation is pretty specific--only ten sites are even eligible. He said who would receive the money would have a lot to do with the timing of the applications, more or less determined by statute.

SEN. DOHERTY suggested MR. GEACH could explain how it would be decided which of the 10 sites gets the money.

MR. GEACH said three out of the top 10 abandoned mine sites would be eligible, limited to up to \$300,000 per site to pay for the orphan's share, but that the cleanup will not be paid for solely with state money.

MR. NOBLE said some of the EQC members had told him they have to leave early and that they needed to set a date for the next meeting.

SEN. WELDON asked what was decided to do about the work plan.

MR. NOBLE said they would determine priority and amount of staff time allotted each work topic at the next meeting. He set the next meeting for July 6.

Topics for Followed and Continuing Legislative Oversight

MR. KAKUK suggested EQC members look over the rest of the proposed study topics and decide at the next meeting what issues to select.

MS. SCHMIDT said, though, she would like to draw attention to item #7--Legislative Oversight of the Natural Resource and Environmental Agency Reorganization Process. She thinks this item might require some discussion. She wanted to know if the Council wanted to be involved and, if so, at what level.

MR. MARX provided an update on what was happening regarding implementation of the natural resource and environmental agency reorganization. He said Mark Simonich had been appointed the new director of the Department of Environmental Quality and Bud Clinch the director of the Department of Natural Resources and Conservation. Within the next two weeks, chief legal counsel, personnel officers, central services directors and public information officers will be selected. Dave Ashley is assigned to oversee the "details" of the reorganization. The actual physical locations of the reorganized agencies will be soon announced. He asked if the other EQC members would like an ongoing report or if they would like to participate as part the public reorganization implementation team or if they'd like to just sit in on meetings.

MR. NOBLE asked how much of the EQC's time it would take to become involved. MR. MARX said they could take as little or as much time as they wanted. He noted the reorganization team would meet once a month.

MR. NOBLE asked if anyone wanted to be on the committee.

SEN. WELDON suggested one of the EQC members or a staffer go to the meetings and report to the Council.

MR. MARX said that would be fine and that they would notify EQC staff when there was a meeting.

SEN. GROSFIELD said the reorganization bill requires the executive branch to be responsible for the reorganization. He said he didn't feel it was necessary for the EQC to be involved in every step.

MR. NOBLE asked MR. KAKUK to proceed with discussion of the next item on the proposed work plan, Voluntary Contaminated Site Cleanup.

MR. KAKUK explained Voluntary Contaminated Site Cleanup.

FLORENCE ORE, representing Concerned Citizens of Pony said she was there to update the Council on the Pony situation. She said the Department had hired Olympus Environmental to do an assessment and cleanup. It turned out Great American Gold (GAG), who took over the milling operation after it was abandoned, had a plan, but she didn't think they had the funds to clean it up. HB 381 de-grandfathered it so that the Pony mill came under DSL rules and regulations but GAG said they would not be using cyanide in the process, that they would open the mill and it would still be grandfathered. John North told her as long as they did not use cyanide they are still grandfathered.

MR. NOBLE said the Pony situation was one he would like to see Council members keep up on. He feels it has far-reaching implications. He suggested that before GAG gets to work, that the community makes sure GAG has the money to back up cleanup or any future problems.

MS. ORE said she didn't think GAG would go through with starting up the mill; that they weren't demonstrating they had the money.

SEN. WELDON asked MR. EVERTS, the drafter of the bill if he recalled the effective date of SB 415. MR. EVERTS said he didn't recall and would find out.

MR. GROSFIELD said he recalled there was a report several months ago that showed one of the significant wells in Pony showed no trace of cyanide in March.

MR. KAKUK said John Arrigo of DHES Water Quality said that while the well was not currently testing positive for cyanide, that the source of contamination was still present and that the well could test positive for cyanide at any time.

MR. GEACH said that one well tested was barely above the detection level and there was some question about whether that was a lab error. He said there was one house he knew of in Pony using bottled water and maybe more.

SEN. GROSFIELD said he agreed with SEN. WELDON that this was a situation that should be closely monitored.

MR. EVERTS explained the next proposed work plan topic, Hazardous Waste Management.

MR. NOBLE recommended the SJR 34 Hazardous Waste Study, recently published by EQC staff, as a good publication to get both sides of the issue.

MR. EVERTS noted they had already discussed item 5, Hazardous Waste Clean Up Issues Generally.

MR. EVERTS continued with an explanation of Solid Waste Management as a work topic.

MR. EVERTS noted they had already discussed item 7, Legislative Oversight of the Natural Resource and Environmental Agency Reorganization process.

MS. SCHMIDT discussed the proposed work topic, Legislative Oversight of the Major Facility siting Act Collaborative Process.

MR. NOBLE asked who was the facilitator for the collaborative working group. ART COMPTON, Chief of the Facility Siting Bureau of the DHES said the facilitator would be Gerald Mueller. He said there were about 16 regular members now and the group would meet monthly, until they had a piece of legislation for the next legislature to consider.

MR. NOBLE asked if they were making any progress so far. MR. COMPTON said the collaborative approach had been effective; the last product of the group passed the 1993 legislature. Now the focus is on economic and environmental cornerstones. The right people are assembled for consensus.

MR. NOBLE asked MR. COMPTON to keep the EQC staff informed.

MR. NOBLE asked if anyone had input on any other issues. He asked staff to report on the status of the lawsuit against the legislative staff brought by the Montana Environmental Information Center on the basis of the Right-to-Know law.

MR. EVERTS said that GREG PETESCH, Legislative Council Legal Services director, had argued at the hearing that under the speech and debate law the legislature is immune from the suit and that they should have the ability to reasonably restrict access.

MR. KNOX said he understood the MEIC was seeking access all the way through the bill drafting process. MR. EVERTS said that was correct.

Emerging Issues

MR. KAKUK discussed Federal Environmental Legislation Reauthorization as a possible work topic.

MR. EVERTS discussed proposed listing of bull trout on the endangered species list as a possible work topic.

MR. NOBLE asked if there were any public comments.

MR. GEACH said he wanted to clarify that the SB 382 collaborative very much wants input from environmental groups and from the public.

MR. EVERTS commended the work of Maureen Theisen, EQC staff publications coordinator and said that she was currently working on the status report of 1995 environmental legislation and that it would be out in a few weeks. He said there were also many other published reports available.

Meeting was adjourned at 4:40 p.m.